Supreme Court, U.S.
FILED
SEP 27 2001
CLERK

(2)

No. 01-305

IN THE

SUPREME COURT IN THE UNITED STATES

OCTOBER TERM 2001

FRANK H. WILSON – PETITIONER, Pro se

VS.

JERRY RUST, et al. - RESPONDENTS(S)

On Petition For Writ of Certiorari To The United States Court Of Appeals For The District of Columbia Circuit

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SUPPLEMENTAL BRIEFS

Frank H. Wilson
62 Thicket Street
Irvine, CA 92614
949/786-4182

32pp

QUESTIONS PRESENTED

I. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, State of Texas and the Federal government violation appear to be of the Fifth Amendment's Due Process Clause and Equal Protection Clause.

II. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, and State of Texas requirement of "State Action."

III. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, State of Texas and the Federal government violation appear to be of the Commerce Clause (Article 1,\ 8 of the Constitution).

IV. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, and State of Texas violation appear to be of the Privileges and Immunities Clause. (Article IV./2) Violation of theContract Clause (Article I. \10) (see PURPA law 1978)

V. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, State of Texas, and the Federal government violation appear to be of his Fundamental rights.

VI. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by the State of Wyoming, State of Texas, and the Federal government because of their involvement. (Using State land and Federal land, Private party's discrimination, Deny an individual opportunity to participate in any activity, and getting pay for the land)

VII. Was Petitioner, Frank H. Wilson, deprived of his constitutional right by Mitsubishi who was a contractor doing business with Pacific Corp that deny an individual an opportunity to participate in any activity. (Putting up wind turbines in Wyoming)

TABLE OF AUTHORITIES CITED

CASES

PAGE NO.

Asbury v. Brougham 866 F. 2d 1276 (10Cir.1989) 5

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 8

Gibbons v. Odgen 22 U.S. (9 Wheat) 1 (1824) 6

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Twining v. New Jersey, 211 U.S. 78 (1908) 3

Transmission Access Policy Study Group, Et Al, v. FERC. 225 F 3d 667; (2000) 8

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JURISDICTION

The judgment sought to be reviewed was filed on 02-23-01. A Petition for Rehearing En Banc was Denied on 06-14-2001. This Supreme Court of the United States has jurisdiction under 28 U.S.C. 1254 (a) to review on Writ of Certiorari the judgment sought to be reviewed of the United State Court of Appeals for the District of Columbia Circuit.

SUPPLEMENTAL BRIEFS

FACTUAL INFORMATION

Due Process Clause: The Fourteenth Amendment provides (in part) that "no state shall make or enforce any law which shall... deprive any person of life, liberty, or property, without due process of law..." This is the Fourteenth Amendment's Due Process Clause.

THE GOVERNMENT HAS TO PROVIDE DUE PROCESS ONLY IF THERE HAS BEEN A DEPRIVATION OF LIFE, LIBERTY, OR PROPERTY.

Did the State of Wyoming, State of Texas and the Federal government provide Due Process for the Petitioner?

The Bill of Rights and the states: One of the major functions of the Fourteenth Amendment's Due Process Clause is to make the Bill of Rights—that is, the first ten Amendments—applicable to the states.

Fundamental Rights: if a state or federal government is impairing a "fundamental right," then the Court uses strict scrutiny: only if the governmental action is "necessary" to achieve a "compelling" government objective, will the government avoid violating substantive due process. Twining v. New Jersey, 211 U.S. 78 (1908)....

Burden of Proof: Strict scrutiny also shifts the burden of persuasion. That is, when a fundamental right is involved, it's up to the state to show that it's pursuing a compelling objective and that the means chosen are "necessary" to achieve that objective-- it's not up to the plaintiff to show that the state fails to meet these tests.

Procedural due process derives, like the requirement of substantive due process, from the Due Process Clauses of the Fifth Amendment (in the case of the federal government) and the Fourteenth Amendment (in the case of the states). Both

STATE OF WYOMING, STATE OF TEXAS AND FEDERAL GOVERNMENT APPEARS FAIL TO GIVEN DUE PROCESS TO THE PETITIONER.....

SECTION 1 OF THE FOURTEENTH AMENDMENT:

No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States.....

[N] or shall any State deprive any person of life, liberty, or property, without due process law.....

[N] or [shall any State] deny to any person within it jurisdiction the equal protection of the laws

The Equal Protection Clause is part of the Fourteenth Amendment. It provides that "no state shall make or enforce any law which shall ... deny to any person within its jurisdiction equal protection of the laws."

Clause guarantees: that people who are similarly situated will be treated similarly. Right to Travel--which is really the right to change one's state of residence or employment...is [fundamental]

ANY GOVERNMENT ACTIONS, ARE CHALLENGED BASED ON EQUAL PROTECTION, THE ISSUE IS WHETHER THE GOVERNMENT CAN IDENTIFY A SUFFICIENTLY IMPORTANT OBJECTIVE FOR ITS DISCRIMINATION.

Property Rights of Citizens 42 U.S.C. 1982

ALL CITIZENS OF THE UNITED STATES SHALL HAVE THE SAME RIGHT, IN EVERY STATE AND

TERRITORY, AS IS ENJOYED BY WHITE CITIZENS THEREOF TO INHERIT PURCHASE, LEASE, SELL, HOLD, AND CONVEY REAL AND PERSONAL PROPERTY.

A landlord maybe held liable for the discriminatory acts of an agent.

See: Izard v. Arndt, 483 F. Supp. 261 (E.D. Wis. 1980); Asbury v. Brougham 866 F. 2d 1276 (10 Cir. 1989) (landlord who was callously indifferent to a racial discriminatory policy of viewing prospective tenants before renting property to them was responsible for his agents' actions in carrying out this policy.

> **The State of Texas land agent wanting the Petitioner to get a Presidential Permit. We ask for help about the problems, we were having with the agent from the other respondent (s) in Texas. No response was given by the respondent (s) in the State of Texas. Did this land agent show indifferent to a racial discriminatory policy of viewing prospective tenants before renting property to him.**
> **Since the Respondent(s) from the State Texas did not response about the problem; it appears that they "encouraged" discrimination. Such encouragement, too, will constitute state action, and may thus trigger a constitutional violation.**
>
> **Reitman v. Mulkey, 387 U.S. 369 (1967)**

No state action was given by State of Texas in my behalf.

"Contract" CLAUSE: One of the few protections against state action given to individuals in the body of the Constitution. Article I, \10: "No State shall…pass any …Law impairing the Obligation of Contracts…" Lynch v. U.S., 292 U.S. 571 (1934)

No state action was given by state of Texas and the state of Wyoming and no federal government action was given in my behalf.

UTILITY COMPANIES FAIL TO GIVE A CONTRACT TO THE PETITIONER: THIS APPEARS TO VIOLATED THE CONTRACT CLAUSE "(REASONABLE AND NECESSARY TO SUPPORT AN IMPORTANT PUBLIC PURPOSE)" (See PURPA Law 1978)

Dormant Commerce Clause:, or as it sometimes called "the negative commerce clause,"

Is the principle that state and local laws are unconstitutional if they place an undue burden on interstate commerce. The Supreme Court has inferred this limit on state regulatory power from the grant of power to Congress to regulate commerce among the states.

Gibbons v. Odgen 22 U.S. (9 Wheat) 1 (1824)

DID THE STATES OF TEXAS AND WYOMING PUT UNDUE BURDEN ON INTERSTATE COMMERCE BECAUSE OF THE POWER SHORTAGE IN CALIFORNIA.

THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV, \ 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. " The Supreme Court has interpreted this provision as limiting the ability of a state to discriminate against out of staters with regard to fundamental rights or important economic activities.

Fundamental rights: Standard are all related to commerce. (Interstate relationships)

Examples: right to be employed, the right to practice one's profession and the right to engage in business are all fundamental, and are therefore protected.

DID THE STATES AND THE FEDERAL GOVERNMENT DEPRIVED THE PETITIONER OF HIS FUNDAMENTAL RIGHTS.

STATE ACTION: rights guaranteed by the Constitution to individuals are protected only against interference by government.

State involvement doctrine:

[ ] the state "commands" or "requires" the private person's action;

[ ] the state "encourage" the private party's action;

[ ] the state and the private actor have a "symbiotic" or "mutually beneficial" relationship;

[ ] the state is "entangled" with the private actor (e.g. they act together to carry out the action being challenged).

STATE AND FEDERAL INVOLVEMENT:

1. Transmission line on State owned land and Federal owned land

2. "Encourage" the private party's action

NO ACTION TAKEN BY STATE OR FEDERAL GOV.

3. "Symbiotic" mutually beneficial

BEING PAY FOR THE LAND

4. "Entangled" they act together to carry out the action being challenged

THEY ACT TOGETHER TOCARRY OUT THE ACTION BEING CHALLENGED

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), Shelley v. Kraemer 334 U.S. 1 (1948)

See letters from state and federal government in Appendix A, B, C, & D.

STATE AND FEDERAL GOVERNMENT INVOLVEMENT WITH UTILITY COMPANIES.....

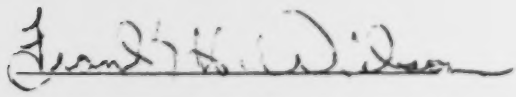
Case 225F3d667;2000 gave FERC authority to open-access:

Transmission Access Policy Study Group, Et Al, Petitioner v. Federal Energy Regulatory Commission Respondent Vermont Department of Public Service Et Al, intervenors. FERC has the authority to order 888 and 889 open access transmission in electricity utility market but did nothing in my behalf.

CONCLUSION

This case involve great public interests Constitutional issues, the liability federal government, the right of individuals, discrimination, utilization of public lands, antitrust law, interstate controversies, Order No. 69 and Open-Access Rule because of the power shortage in the west. Wherefore, Petitioner, Frank H. Wilson, requests that this Supreme Court of the United States grant this petition for a Writ of Certiorari.

Respectfully submitted,



Date: September 27, 2001

Frank H. Wilson
62 Thicket Street
Irvine, CA. 92614
949-786-4182

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Appendix D Buyer letters from out of the State of Wyoming (Interstate Commerce)

APPENDIX A

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

ROBERT E. BADHAM
40th DISTRICT, CALIFORNIA

October 27, 1986

Frank H. Wilson
62 Thicket
Irvine, CA 92614

Dear Mr. Wilson:

I have received copies of your correspondence to the Federal Energy Regulatory Commission responding to their letter dated September 19, 1986.

I have forwarded your correspondence to Christopher J. Warner, Acting General Counsel requesting a thorough review. As soon as I receive a response, I will let you know.

Cordially,

Robert E. Badham
Member of Congress

REB:lh

APPENDIX B

STATE OF WYOMING
OFFICE OF THE GOVERNOR

August 5, 1998

Frank H. Wilson
Wilson-7
Energy Systems Inc.
#62 Thicket
Irvine, California 92714

Dear Frank:

Thank you for your letter of August 3, 1998 regarding your issue with the utilities industry in Wyoming.

Let me reiterate the position stated by the Public Service Commission: As the commission is a state utility regulatory agency and does have jurisdiction over utilities, it does not service as a court determining damages for alleged wrongdoings by the utilities. The State has no authority either through the Commission or through my office to assert such jurisdiction over this matter. This matter is best handled through a civil action before the court.

I appreciate your concerns, but can only offer what is within the State's jurisdiction and authority, by serving as regulatory entity over the public utilities in Wyoming. Thank you for taking the time to write.

Best Regards,

Jim Geringer

JG/nm
CC: Stephen Oxley, Public Service Commission

PUBLIC SERVICE COMMISSION
HANSEN BUILDING, SUITE 300
2515 WARREN AVENUE
CHEYENNE, WYOMING 82002

April 6, 1998

Mr. Frank L. Wilson
Wilson-7 Energy Systems, Inc.
#62 Thicket
Irvine, California 92714

Dear Mr. Wilson:

Chairman Steve Ellenbecker has shared with me a copy of your letter of March 17, 1998, to him concerning PacifiCorp and Mitsubishi concerning the development of wind generation in Wyoming. We have sent copies of your correspondence to PacifiCorp and have asked them to copy us with any responses they make to you.

Yours very truly,

STEPHEN G. OXLEY
Secretary and Chief Counsel

xc: Steve Ellenbacker

OFFICE OF THE ATTORNEY GENERAL
Civil Division
123 Capitol Building
Cheyenne, Wyoming 82002

August 10, 1998

Wilson-7 Energy Systems, Inc.
ATTN: Frank H. Wilson
#62 Thicket
Irvine, CA 92714

RE: Proposed wind farm

Dear Mr. Wilson:

This letter is in response to your letter dated July 6, 1998 regarding your company's desire for a power purchase agreement and wheeling agreement. We have taken considerable time to research your issues and have talked to several of the different sources you reference.

Specifically, you spoke to Steve Oxley and Frank Smith, both of the Wyoming Public Service Commission (WPSC). They both explained to you that your issues are not within the jurisdiction of the WPSC. First of all, the problems you incurred with the power purchase agreement and a wheeling agreement are private contractual matters. The Wyoming Supreme Court has directed the WPSC to "not meddle in the private sector's contractual affairs" between utility companies. *Union Telephone Company v. Wyoming Public Service Comm.*, 910 P.2d 1362 (Wyo. 1966). The WPSC has no authority to force utility companies to enter into contracts with each other. Secondly, if some of your questions do in fact involve enforcement of the federal Public Utilities Regulatory Policies Act, this would be within the jurisdiction of FERC and not the WPSC.

It may be best for you to hire a private attorney who is knowledgeable in these matters to assist you in proceeding with your proposed wind farm. The answers you are looking for, unfortunately, cannot come from this office, nor from the WPSC.

Thank you for your inquiry.

Sincerely,

Carol S. Verosky
Assistant Attorney General

CSV:bkm

APPENDIX C

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 29

Dear Mr. Wilson:

I have tried to contact you by phone on numerous occasions during the month of September and August without success. The attached map shows the location of PacifCorp's project in the Foote Creek Rim of Wyoming, as you requested. As I explained, the complaint you describe requires some action by you in a different jurisdiction.

If you have any questions, please call

Kim Bruno

P.S. Your materials are enclosed

UNITED STATES DEPARTMENT
OF THE INTERIOR
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

May 4, 2001

Mr. Frank H. Wilson
62 Thicket Street
Irvine, CA 92614

Dear Mr. Wilson:

We are in receipt of your facsimile letter dated April 20, 2001, concerning contract compliance relating to interstate commerce, equal opportunity, and discrimination. The issues you described do not fall within the investigative jurisdiction of our office.

We regret that we could not be of assistance.

Sincerely,

David A. Montoya
Assistant Inspector General
For Investigations

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C.
20210

March 16, 2001

Frank H. Wilson
62 Thicket
Irvine, CA 92614

Dear Mr. Wilson:

This is in response to your letter dated March 9, 2001 regarding Public Utilities companies and the Energy Department.

I am advised that the subject of your letter does not fall within the jurisdiction of the Department of Labor. I have, by copy of this letter, forwarded your letter to the Department of Justice.

Sincerely,

Lisa L. Lahrman
Deputy Executive Secretary

Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

DEPARTMENT OF ENERGY
WASHINGTON, DC 20585

January 5, 1999

Mr. F. Wilson
WILSON 7
62 Thicket
Irvine, California 92714

Dear Mr. Wilson:

This will acknowledge your October 17, 1998 letter. We apologize for the delay in responding to your inquiry.

Because the subject of this letter does not fall within the purview of the Department of Energy, we have forwarded your letter to:

Mr. Paul McKee
Director, Executive Secretariat
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Sincerely,

Brenda L. Mackall
Work Group Leader
Correspondence and Records Management
Office of the Executive Secretariat

U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE INSPECTOR GENERAL

April 26, 2001

Frank H. Wilson
62 Thicket Street
Irvine, CA 92614

Dear Mr. Wilson:

The purpose of this letter is to acknowledge receipt of your correspondence dated April 20, 2001. The matters that you raised have been reviewed by the staff of the Investigations Division, Office of the Inspector General.

The primary investigative responsibilities of this office are:

- Allegations of criminal, as well as non-criminal, misconduct committed by U.S. department of Justice employees and contractors; and

- Waste and abuse by high ranking Department officials, or that affects major programs and operations.

This office does not have jurisdiction in the matter you described. You may wish to seek legal counsel or contact a legal aid organization to determine what remedies, if any, are available to you.

We regret that we are unable to assist you further.

Sincerely,

Roger M. Williams
Special Agent in Charge of Operations
Investigations Division

U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

February 11, 1998

Mr. Frank H. Wilson
Wilson 7
62 Thicket Street
Irvine, California 92714

Dear Mr. Wilson:

This letter is written in response to your fax addressed to the Civil Division dated February 6, 1998. We do not enforce PURPA here at The United States Attorneys Office. However, you can write to the Federal Energy Regulatory Commission (FERC) and they may be of some assistance to you.

Please refer back to the letter from Mark Bailey dated February 2, 1998, regarding Title VI of the Civil Rights Act of 1964. It also states that if you believe that the contract which you were denied was funded in part by an agency of the United States, you may wish to file a complaint directly with the federal funding agency.

Sincerely,

S. Simpson-Allaway
Paralegal Specialist
Civil Division

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, DC 20507

March 13, 2001

Frank Wilson
62 Thicket Street
Irvine, CA 92614

Dear Mr. Wilson:

This is in response to your letter dated March 9, 2001, concerning the interstate commerce problem you have experienced.

EEOC is responsible for enforcing statutes prohibiting employment discrimination on the basis of race, color, sex, religion, national origin, age and disability. Our jurisdiction does not extend to interstate commerce. However, the Department of Transportation may be able to help you. Therefore, we are forwarding your letter to the address listed below:

Department of Transportation
Surface Transportation Board
1925 K Street, NW
Washington, DC 20590
202/565-1650

We regret that we are unable to assist you directly. If in the future we can assist you with matters that fall within the EEOC's realm of responsibility, please feel free to contact us.

Sincerely,

Frances M. Hart
Executive Officer
Executive Secretariat

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

April 3, 2001

Mr. Frank H. Wilson
62 Thicket Street
Irvine, CA 92614

Dear Mr. Wilson:

This is in reference to your letter via fax on March 12, 2001 and received on Mach 12, 2001.

This matter is not properly before the Office of Federal Operations, since it appears that you have not received the agency's final action/order, nor does it appear that more than forty (40) days have passed from the issuance of an Administrative Judge's decision. If you believe that you have an appealable matter, please send us a copy along with this letter.

You may review the EEOC's revised regulations, found at 64 Federal Regulations 37,644 (1999) (to be codified at 29 C.F.R. Part 1614), on the EEOC's web site at www.EEOC.GOV.

Your correspondence is being returned to you for your use. We hope this information is helpful to you.

Sincerely,

John Flanigan
Compliance Officer
Compliance and Control Division

Enclosures: 2
jf/aq

APPENDIX D

PUBLIC SERVICE
SYSTEM PLANNING DIVISION
5809 East 38th Avenue
Denver, Colorado 80207

August 26, 1986

Mr. Frank H. Wilson
Wilson-7Energy Systems
62 Thicket
Irvine, California 92714

Dear Mr. Wilson:

In response to your recent letter we are pleased to provide the specific points of delivery between the Western Area Power Administration and Public Service Company of Colorado (PSCo) transmission systems. These specific points are located at the following PSCo substations:

Weld
Story
Rifle
Basalt
Poncha Springs

Please keep us informed of the status of your project.

Sincerely,

Donald E. Smith
Planning Engineer

let/FHW/DS
GMS31

PUBLIC GAS AND ELECTRIC COMPANY
77 Beale Street
San Francisco, CA 94106

February 6, 1992

CERTIFIED MAIL

Mr. Frank H. Wilson
Wilson-7 Energy Systems
62 Thicket
Irvine, California 92714

Dear Mr. Wilson:

Subject: Wilson-7 Energy Systems 200,000 kW Wind Project
PG&E Log. No. 04W046

This letter informs you that the Wilson-7 Wind Project is in danger of losing its allocation for transmission capacity and describes what steps you must take in order to keep this allocation.

My records indicate that on January 21, 1992, you received a letter from me indicating that the above-referenced project had become eligible to participate in the California Public Utilities Commission (CPUC) Interim Solution issued in Oil 84-04-077. You were also informed that to retain this eligibility you are required to comply with the milestones and procedures contained in the Qualifying Facility Milestone Procedure (QFMP), which was enclosed with the above-mentioned letter.

For the above-referenced project, the QFMP requires you to complete and return to PG&E a "Project Description and Interconnection Study Request" within ten (10) calendar days from the date of your receipt of the letter. The ten (10) calendar day deadline expired on February 4, 1992. Therefore, you are currently in violation of the QFMP.

The QFMP allows you fifteen (15) working days from receipt of this letter to cure your failure to meet this milestone. Therefore, within this time period you must submit a "Project Description and Interconnection Study Request". IF YOU FAIL TO CURE THESE DEFICIENCIES WITHIN THE PRESCRIBED TIME PERIOD, YOU RISK THJE LOSS OF INTERCONNECTION PRIORITY FOR YOUR PROJECT.

Please submit this information to:

Frieda B. Alker, QF Contracts Department
Pacific Gas and Electric Company 77 Beale Street,
Room 2362,San Francisco, California 94106

If you have any questions, please call me at (414) 972-1873.

Sincerely,

Frieda B. Alker, QF Contracts